

TO: Mail Stop 8 Director of the U.S. Patent & Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
filed in the U.S. District Court Northern District of California on the following ☐ Patents or ☒ Trademarks:

DOCKET NO. CV 11-00987 DMR	DATE FILED 3/3/2011	U.S. DISTRICT COURT Oakland Division, 1301 Clay St., Suite 400S, Oakland, CA 94612
PLAINTIFF BACCHUS MANAGEMENT GROUP		DEFENDANT TALISKER CANYONS
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 3,376,380		*SEE ATTACHED COMPLAINT
2		
3		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK Richard W. Wicking	(BY) DEPUTY CLERK Valerie Kyono	DATE March 7, 2011
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Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to Commissioner
Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

1 SEDGWICK, DETERT, MORAN & ARNOLD LLP
Matthew A. Fischer (State Bar No. 191451)
2 Jia-Ming Shang (State Bar No. 233326)
One Market Plaza
3 Steuart Tower, 8th Floor
San Francisco, California 94105-1008
4 Tel: 415.781.7900
Fax: 415.781.2635
5 Email: matthew.fischer@sdma.com
Email: jiaming.shang@sdma.com

6 Attorneys for Plaintiff BACCHUS MANAGEMENT
7 GROUP, LLC

E-filing

DMR

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11
12 BACCHUS MANAGEMENT GROUP, LLC,
13 a California Limited Liability Company,

14 Plaintiff,

15 v.

16 TALISKER CANYONS (WA DAKOTA),
17 LLC., a Delaware Limited Liability Company,
18 and DOES 1-10 inclusive,

19 Defendants.

CV11 0987

COMPLAINT FOR:

- (1) Trademark Infringement (Lanham Act)
- (2) Trade Dress Infringement (Lanham Act)
- (3) False Designation of Origin (Lanham Act)
- (4) Dilution (Lanham Act)
- (5) Unfair Competition (Lanham Act)
- (6) Breach of Oral Contract
- (7) Breach of the Implied Covenant of Good Faith and Fair Dealing
- (8) Unjust Enrichment
- (9) Declaratory Relief

DEMAND FOR JURY TRIAL

22
23 Plaintiff Bacchus Management Group, LLC ("Plaintiff" or "BMG") brings this action
24 against defendant Talisker Canyons (WA Dakota), LLC ("Talisker" or "Defendant") and for its
25 complaint alleges as follows:

26 ///

27 ///

28 ///

NATURE OF ACTION AND JURISDICTION

1
2 1. This is an action for, *inter alia*, claims arising under the Lanham Act, 15 U.S.C.
3 § 1051. *et. seq.*, breach of oral contract between diverse parties, and ancillary common law
4 claims. The amount in controversy is well in excess of \$75,000. This Court therefore has
5 subject matter jurisdiction of this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331,
6 1332, 1338 and 1367.

7 2. This Court has personal jurisdiction over the Defendant because Defendant
8 initiated contact with BMG in California to negotiate an oral contract for, among other things, a
9 license of BMG's intellectual property. Thereafter, Defendant made six monthly in
10 consideration of said license by sending checks to BMG's office in San Francisco, California. In
11 or around September 2010, Defendant ceased making license payments but has continued to use
12 BMG's trademark and trade dress without consent and despite repeated warnings by BMG. As a
13 result, Defendant's continuing unauthorized use of BMG's intellectual property has caused and
14 continues to cause irreparable injury to BMG in California.

15 3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a
16 substantial part of the events giving rise to BMG's claims and the situs of substantial harm to
17 BMG are within this district, in San Francisco. The contract between the parties was negotiated
18 in San Francisco, the contract was formed by BMG's acceptance of Plaintiff's verbal offer in San
19 Francisco, acts or omissions constituting breaches of contract took place in San Francisco, and
20 Plaintiff's intellectual property is located here.

INTRADISTRICT ASSIGNMENT

21
22 4. As a result of the foregoing paragraph, and pursuant to Civil L.R. 3-2, this action
23 should be assigned to this Court's San Francisco division.

PARTIES

24
25 5. BMG is a limited liability company organized under the laws of the State of
26 California and having its principal place of business at 3001 19th Street, San Francisco,
27 California, 94110. BMG is in the business of restaurant consulting and management.
28

6. Talisker is a limited liability company organized under the laws of the State of Delaware and having its principal place of business at 1850 Sidewinder Drive, 2nd Floor, Park City, Utah, 84060. On information and belief, Talisker was formed in March 2010 to take ownership or control of the Waldorf-Astoria hotel and resort in Park City, Utah. Talisker is a wholly owned subsidiary of Talisker Corporation, a Toronto based international real estate development company.

7. BMG is ignorant of the true names and capacities of the defendants sued herein as DOES 1-10, inclusive, and therefore sues these defendants by such fictitious names. BMG will amend this complaint to allege their true names and capacities when ascertained. Each of the fictitious named defendants is legally responsible in some manner for the occurrences herein alleged, and subject to and liable for the relief prayed for below.

8. All defendants, including those defendants sued in the name of DOE, were agents, servants and employees of each other, and in doing the things alleged here, were acting within the scope of their authority as such agents, servants and employees with the permission and consent of their codefendants.

FACTS

9. BMG is the owner of trademark registration number 3,376,380, issued on January 29, 2008 for the mark SPRUCE RESTAURANT® (the “Spruce Mark”). A true and correct copy of this registration is attached hereto as **Exhibit 1**. BMG’s Spruce Mark was first used in connection with restaurant, bar and food services in August of 2007, and the mark has been used in commerce continuously ever since.

10. BMG also owns and operates a popular and successful upscale restaurant in San Francisco named Spruce (“San Francisco Spruce Restaurant”). The San Francisco Spruce Restaurant is known for inventive New American food and world class service, and was one of a limited number of restaurants in San Francisco to receive a coveted star from the 2010 Michelin Guide. It was recognized by Esquire Magazine as the “Best New Restaurant” in San Francisco for 2008 and made the subject of a full page feature in the April 2008 edition of Food and Wine Magazine. San Francisco Spruce Restaurant has earned additional recognition from the San

1 Francisco Chronicle (Top 100 Bay Area Restaurants 2008-2010), Conde Nast Traveler (Hot List,
2 May 2008), 7x7 Magazine (Best Newcomer, February 2008), and Wine Spectator (Best of
3 Award of Excellence, 2008-2010).

4 11. As a result of these and other accolades, the Spruce Mark has attained recognition
5 as a source identifier and has achieved fame, consumer recognition, and goodwill, particularly in
6 the luxury dining and hospitality market.

7 12. The Spruce Mark is used to distinguish the restaurant dining services and
8 experience created and managed by BMG and is prominently displayed on advertising and
9 marketing materials distributed in connection with the San Francisco Spruce Restaurant.

10 13. The San Francisco Spruce Restaurant features a unique and distinctive look and
11 feel to its waiting and dining spaces that includes, *inter alia*, as key elements: chocolate brown
12 mohair walls, ostrich leather chairs in the dining room, saddle leather couches, Madagascar
13 ebony zebra wood host stand, rock crystal table votives, hand rubbed silver-lead back bar frames,
14 mirror paneled wall screens, and carrera marble coffee tables ("Spruce Trade Dress"). The
15 unique combination of elements comprising the Spruce Trade Dress causes it to be closely
16 associated in consumers' minds with the Spruce Mark and the San Francisco Spruce Restaurant.

17 14. Because of the success of the San Francisco Spruce Restaurant and the recognized
18 national value of the Spruce Mark, BMG was approached in 2008 about licensing the Spruce
19 Mark and Spruce Trade Dress to restaurants outside San Francisco. As a result, BMG entered
20 into a written "Spruce License and Management Agreement" ("License Agreement") dated
21 October 13, 2008 with DuVal Development Partners I, LLC, Dakota Restaurant Unit, LLC, and
22 Dakota Hotel Unit, LLC (collectively, "DuVal"). In exchange for an initial payment of \$250,000
23 and future payments based on the success of the business, BMG granted DuVal a license to use
24 the Spruce Mark and Spruce Trade Dress at a restaurant in the Waldorf Astoria hotel in Park
25 City, located at 2100 Frostwood Drive, Park City, Utah, 94089 ("Park City Spruce Restaurant").
26 BMG also agreed to provide certain consulting services to DuVal in connection with the
27 restaurant's opening and operations.
28

1 15. DuVal proceeded to open the Park City Spruce Restaurant, making extensive use
2 of the Spruce Mark and Spruce Trade Dress. DuVal paid half of the initial \$250,000 fee for
3 licensing the Spruce Mark and Spruce Trade Dress and was to pay the remaining \$125,000
4 within three months of the restaurant's opening.

5 16. Upon information and belief, on or around October 27, 2009, DuVal deeded
6 assets, including the Park City Spruce Restaurant, to MLQ DML Hotel, LLC, a wholly-owned
7 subsidiary of Archon Group, L.P, which in turn is a wholly owned subsidiary of Goldman Sachs.
8 In a telephone conversation with BMG shortly after assuming control, Brian Nordahl
9 ("Nordahl") of MLQ DML/Archon (collectively, "Archon") stated that Archon did not assume
10 DuVal's obligations under the License Agreement due, in part, to DuVal's transfer of assets
11 only.

12 17. Upon information and belief, in or around March 2010, Talisker acquired the
13 ownership and/or control of the Park City Spruce Restaurant from Archon.

14 18. Upon information and belief, Duval filed for bankruptcy in or around April 28,
15 2010 in the Western District of North Carolina.

16 19. On or around March 25, 2010, Tom Hogan ("Hogan"), on behalf of Talisker, and
17 Nordahl, on behalf of Archon, initiated a telephone call to Tim Stannard of BMG in
18 San Francisco to discuss Talisker's acquisition from Archon of the Park City Spruce Restaurant
19 and Talisker's continued use of the Spruce Mark and Spruce Trade Dress at the restaurant.
20 In this conversation with Stannard, Hogan adopted Archon's position that the License
21 Agreement with DuVal was null and void following DuVal's transfer of the assets of the Park
22 City Spruce Restaurant to Archon, and denied that Talisker had any obligations under the
23 License Agreement.

24 20. Hogan has on subsequent occasions, including in August of 2010, reiterated
25 Talisker's position that it is not bound by the License Agreement and assumed no rights or
26 obligations under it.

27 21. However, during the March 25, 2010 call, Hogan stated that Talisker considered
28 the Park City Spruce Restaurant to be the "centerpiece" of the hotel and a central basis for

1 Talisker's acquisition of the hotel. Hogan stated that Talisker wanted to continue using the
2 Spruce Mark and Spruce Trade Dress, and proposed an oral agreement allowing Talisker the
3 right to their use.

4 22. By the end of the March 25, 2010 call, BMG and Talisker had reached an oral
5 agreement consisting of at least the following terms: (1) that Talisker would be permitted to
6 continue using the Spruce Mark and Spruce Trade Dress; (2) that Talisker would make payments
7 to BMG for the right to use the Spruce Mark and Spruce Trade Dress; (3) that the amount of
8 payments by Talisker to BMG would track the monthly payments required of DuVal under the
9 written License Agreement, and would be comprised of: (a) an amount equal to ten percent
10 (10%) of gross revenues at the Park City Spruce Restaurant; (b) an amount equal to ten percent
11 (10%) of gross revenues derived from catering activities, on and off the premises of the
12 restaurant; (c) an amount equal to six percent (6%) of gross revenues derived from banquets and
13 special events on and off the premises of the hotel; (d) an amount equal to six percent (6%) of
14 gross revenues derived from in room service at the Waldorf Astoria hotel provided by the
15 restaurant; and (e) an amount equal to six percent (6%) of gross revenues derived by the Waldorf
16 Astoria hotel from food and beverage sales from the restaurant; and (4) that Talisker would
17 ensure that the Park City Spruce Restaurant adhered to the high quality standards established by
18 BMG to protect the Spruce brand.

19 23. Pursuant to the oral agreement, Talisker made its first payment to BMG of
20 \$35,806.03 in licensing fees for the March 2010 period by mailing a check to BMG's offices in
21 San Francisco. The check was deposited in San Francisco by BMG on or around May 6, 2010.

22 24. Pursuant to the oral agreement, Talisker made its second payment to BMG of
23 \$26,964.44 in licensing fees for the April 2010 period by mailing a check to BMG's offices in
24 San Francisco. The check was deposited in San Francisco by BMG on or around July 19, 2010.

25 25. Pursuant to the oral agreement, Talisker made its third payment to BMG of
26 \$16,736.06 in licensing fees for the May 2010 period by mailing a check to BMG's offices in
27 San Francisco. The check was deposited in San Francisco by BMG on or around August 3,
28 2010.

1 26. Pursuant to the oral agreement, Talisker made its fourth payment to BMG of
2 \$19,718.99 in licensing fees for the June 2010 period by mailing a check to BMG's offices in
3 San Francisco. The check was deposited in San Francisco by BMG on or around September 28,
4 2010.

5 27. Pursuant to the oral agreement, Talisker made its fifth payment to BMG of
6 \$29,225.24 in licensing fees for the July 2010 period by mailing a check to BMG's offices in
7 San Francisco. The check was deposited in San Francisco by BMG on or around September 28,
8 2010.

9 28. Pursuant to the oral agreement, Talisker made its sixth payment to BMG of
10 \$28,313.74 in licensing fees for the August 2010 period by mailing a check to BMG's offices in
11 San Francisco.

12 29. The \$28,313.74 check for the August 2010 period was the last payment from
13 Talisker. Despite its refusal to pay license fees to BMG in violation of the parties' verbal
14 agreement, Talisker has continued to use the Spruce Mark and Spruce Trade Dress at the Park
15 City Spruce Restaurant.

16 30. Between March and August of 2010, BMG also learned that Talisker was not
17 maintaining food and service quality standards at the Park City Spruce Restaurant at a level
18 commensurate with the Spruce brand, in violation of the parties' agreement. Problems at Park
19 City Spruce Restaurant included inadequate performance by the restaurant's hourly staff, lack of
20 sufficient staffing, use of unaccountable contract staff supplied by vendors instead of using full
21 time employees, and antiquated human resources practices.

22 31. In July and August of 2010, Stannard placed multiple calls and sent multiple
23 emails to Hogan seeking an explanation for Talisker's decision to stop license payments and the
24 declining quality standards at Park City Spruce Restaurant. On August 16, 2010, BMG wrote to
25 Hogan giving Talisker 30 days to fulfill its obligations under the oral contract, including
26 resuming licensing payments, bringing BMG current on all payments owed, and remedying the
27 quality issues at the restaurant, or Talisker would lose the right to use the Spruce Mark and
28 Spruce Trade Dress. Hogan, on behalf of Talisker, verbally responded to this letter by telephone

1 and stated that Talisker either could not or would not remedy BMG's quality concerns. Talisker
2 refused all subsequent attempts by BMG to communicate. As a result, by no later than
3 September 15, 2010, Talisker had lost the right to use the Spruce Mark and Spruce Trade Dress.

4 32. Talisker is unlawfully and unfairly capitalizing on BMG's intellectual property by
5 continuing to use the Spruce Mark and Spruce Trade Dress at the Park City Spruce Restaurant
6 despite BMG's express termination of Talisker's license.

7 33. By way of example, Defendant has used and continues to use the Spruce Mark
8 and Spruce Trade Dress to market the Park City Spruce Restaurant, including in posters and
9 signs throughout the Waldorf Astoria hotel, through the restaurant's website address at
10 www.sprucepc.com, and in the website's content (accessed on February 26, 2011) which falsely
11 claims a relationship to the San Francisco Spruce Restaurant with the following statements on
12 the website landing page:

13 Spruce is Located in the beautiful Waldorf Astoria Park City
14 nestled within The Canyons ski resort. **Spruce's first location**
15 **opened in San Francisco in 2007 and has received national**
16 **acclaim for its American cuisine, impeccable service,**
handsome decor, and unparalleled wine and spirits program.
Spruce now brings that beloved neighborhood restaurant to
Park City, Utah.

17 Upon entering you are immediately submerged in a sea of
18 **chocolate mohair walls; large saddle leather chairs and**
couches, a long white carrera marble bar and stunning
19 **Baccarat crystal chandeliers.** Whatever the occasion may be, we
20 welcome you to join us for a luxurious meal in our dining room, an
apres-ski cocktail and house-made charcuterie plate, or Spruce's
famous burger in our bar and lounge area.

21 34. The Park City Spruce Restaurant also repeats the statements from its website on
22 third party websites such as www.opentable.com. Another website
23 (http://www.parkcityinfo.com/includes/events/?action=displayDetail&eventId=15688) features
24 upcoming events at the Park City Spruce Restaurant, including a special menu on March 9, 2011
25 from a visiting celebrity chef from Australia. Guests are notified the event is held at the "Spruce
26 Restaurant @ Waldorf Astoria Park City." Talisker representatives even include the Spruce
27 Mark and distinctive logo as part of their email signature blocks.
28

1 Talisker's Park City Spruce Restaurant is affiliated with or otherwise approved and endorsed by
2 BMG's San Francisco Spruce Restaurant.

3 41. Defendant's use of the Spruce Mark constitutes trademark infringement pursuant
4 to 15 U.S.C. § 1114.

5 42. Defendant's unlawful acts have caused immediate, irreparable injury to BMG and
6 will continue to irreparably harm BMG unless enjoined.

7 43. As a direct and proximate result of Defendant's unauthorized use of the Spruce
8 Mark, Defendant has wrongfully obtained profits and benefits.

9 44. Defendant's unauthorized use of the Spruce Mark is willful, intentional,
10 malicious, deliberate, and in bad faith. Accordingly, this case qualifies for enhanced damages
11 and attorney's fees pursuant to 15 U.S.C. § 1117.

12 45. As a direct and proximate result of Defendant's unauthorized use of the Spruce
13 Mark, BMG has been damaged within the meaning of 15 U.S.C. § 1114 in an amount to be
14 proven at trial, or in the statutory amount.

15 SECOND CAUSE OF ACTION

16 (Trade Dress Infringement, Lanham Act, 15 U.S.C. § 1125)

17 46. Plaintiff incorporates by reference all paragraphs above as if set forth in full.

18 47. Plaintiff uses the distinctive Spruce Trade Dress in connection with its restaurant
19 services in commerce.

20 48. BMG has continuously used the elements of the Spruce Trade Dress in connection
21 with restaurant services since long prior to Defendant's unauthorized use of its trade dress.

22 49. Defendant has used and continues to use the Spruce Trade Dress in connection
23 with the advertising and sale in commerce of goods and/or services at the Park City Spruce
24 Restaurant despite BMG's notification that Defendant has no license to do so.

25 50. The design components that comprise the Spruce Trade Dress are non-functional,
26 inherently distinctive, and have acquired secondary meaning in the marketplace because
27 consumers associate its design with the Spruce Mark and the high quality décor, service and food
28 of the San Francisco Spruce Restaurant.

1 51. Consumers are likely to be confused that the Park City Spruce Restaurant, which
2 uses the Spruce Trade Dress, is sponsored by or affiliated with BMG and the San Francisco
3 Spruce Restaurant, when, in fact, it is not.

4 52. As a direct and proximate result of Defendant's unauthorized use of the Spruce
5 Trade Dress, Defendant has wrongfully obtained profits and benefits.

6 53. Defendant's unlawful acts have caused immediate irreparable injury to BMG, and
7 will continue to irreparably harm BMG unless enjoined.

8 54. Defendant's unauthorized use of the Spruce Trade Dress is willful, intentional,
9 malicious, deliberate, and in bad faith.

10 55. As a direct and proximate result of Defendant's unauthorized use of the Spruce
11 Trade Dress, BMG has been damaged in an amount to be proven at trial, or in the statutory
12 amount.

13 **THIRD CAUSE OF ACTION**

14 (False Designation of Origin, Lanham Act, 15 U.S.C. § 1125)

15 56. Plaintiff incorporates by reference all paragraphs above as if set forth in full.

16 57. Defendant's use or reference to the Spruce Mark and Spruce Trade Dress in
17 advertising, such as at www.sprucepc.com and on www.opentable.com, falsely leads consumers
18 to believe that a relationship or affiliation exists between the Park City Spruce Restaurant and the
19 San Francisco Spruce Restaurant and/or that the Park City Spruce Restaurant originates from the
20 San Francisco Spruce Restaurant.

21 58. As a direct and proximate result of Defendant's unauthorized use of the Spruce
22 Mark and Spruce Trade Dress, Defendant has wrongfully obtained profits and benefits.

23 59. Defendant's unauthorized use of the Spruce Mark and Spruce Trade Dress in
24 advertising was willful, intentional, malicious, deliberate, and in bad faith.

25 60. Defendant's unlawful acts have caused immediate irreparable injury to BMG and
26 will continue to irreparably harm BMG unless enjoined.

61. As a direct and proximate result of Defendant's unauthorized use of the Spruce Mark and Spruce Trade Dress in advertising, BMG has been damaged in an amount to be proven at trial, or in the statutory amount.

FOURTH CAUSE OF ACTION

(Trademark Dilution, Lanham Act, 15 U.S.C. §§ 1117, 1125(c))

62. Plaintiff incorporates by reference all paragraphs above as if set forth in full.

63. The Spruce Mark has become distinctive and famous as a result of the San Francisco Spruce Restaurant's superior food and service, recognition in the Michelin Guide, and the multitude of favorable reviews and accolades within the luxury food service industry.

64. Defendant has used and continues to use without authorization the Spruce Mark after it became distinctive and famous.

65. Defendant's continued use of the mark has diluted and harmed the value of the Spruce Mark by causing a loss of distinctiveness of the mark and causing it to lose its ability to serve as a unique identifier of BMG's San Francisco Spruce Restaurant.

66. As a direct and proximate result of Defendant's unauthorized use of the Spruce Mark, Defendant has wrongfully obtained profits and benefits.

67. Defendant's unlawful acts have caused immediate, irreparable injury to BMG and will continue to irreparably harm BMG unless enjoined.

68. Defendant's unauthorized use of the Spruce Mark and Spruce Trade Dress was willful, intentional, malicious, deliberate, and in bad faith.

69. As a direct and proximate result of Defendant's unauthorized use of the Spruce Mark, BMG has been damaged in an amount to be proven at trial, or in the statutory amount.

FIFTH CAUSE OF ACTION

(Unfair Competition, Lanham Act, 15 U.S.C. §§ 1117, 1125(a))

70. Plaintiff incorporates by reference all paragraphs above as if set forth in full.

71. Defendant's use in commerce and advertising of the Spruce Mark and Spruce Trade Dress has created a likelihood of confusion or deception about the origin, sponsorship or

1 affiliation of the Park City Spruce Restaurant with BMG and the San Francisco Spruce
2 Restaurant.

3 72. As a direct and proximate result of Defendant's unauthorized use of the Spruce
4 Mark and Spruce Trade Dress, Defendant has wrongfully obtained profits and benefits.

5 73. Defendant's unauthorized use of the Spruce Mark and Spruce Trade Dress was
6 willful, intentional, malicious, deliberate, and in bad faith.

7 74. As a direct and proximate result of Defendant's unauthorized use of the Spruce
8 Mark and Spruce Trade Dress, BMG has been damaged in an amount to be proven at trial, or in
9 the statutory amount.

10 **SIXTH CAUSE OF ACTION**

11 (Breach of Contract)

12 75. Plaintiff incorporates by reference all paragraphs above as if set forth in full.

13 76. During a phone call on March 25, 2010, BMG and Talisker negotiated and agreed
14 to an oral contract following Talisker's acquisition of the Park City Spruce Restaurant from
15 Archon in March 2010.

16 77. Under that contract, BMG agreed to grant Talisker a license to use the Spruce
17 Mark and Spruce Trade Dress and, in turn, Talisker agreed: (1) to make payments to BMG on
18 the same schedule and same terms that DuVal was to make under the written License
19 Agreement; and (2) to ensure that the Park City Spruce Restaurant adhered to the high quality
20 standards established by BMG to protect the Spruce brand.

21 78. BMG performed all obligations, conditions and promises required by BMG to be
22 performed in accordance with the terms of the agreement.

23 79. Talisker initially performed its obligations under the agreement by making
24 payments for March 2010 through August 2010, but thereafter breached the agreement by failing
25 to pay licensing fees for the September 2010 period and thereafter. Talisker further breached the
26 agreement by allowing quality standards at the Park City Spruce Restaurant to fall below certain
27 standards, including, but not limited to, poor service, inadequate performance by the restaurant's
28

1 hourly staff, use of unaccountable contract staff supplied by vendors instead of using full time
2 employees, and antiquated human resources practices.

3 80. As a direct and proximate result of Talisker's actions, BMG has been damaged in
4 an amount to be proven at trial.

5 **SEVENTH CAUSE OF ACTION**

6 (Breach of Implied Covenant of Good Faith and Fair Dealing)

7 81. Plaintiff incorporates by reference all paragraphs above as if set forth in full.

8 82. Contained within the parties' oral contract was an implied covenant of good faith
9 and fair dealing by one party not to do anything which would deprive the other party of the
10 benefits of the contract.

11 83. Talisker's actions alleged herein violated the implied covenant by depriving BMG
12 of the benefit it stood to receive under the oral contract, including money payments and the
13 continued reputation for high quality, luxury restaurant services associated with the Spruce
14 brand.

15 84. As a direct and proximate result of Talisker's actions, BMG has been damaged in
16 an amount to be proven at trial.

17 **EIGHTH CAUSE OF ACTION**

18 (Unjust Enrichment)

19 85. Plaintiff incorporates by reference all paragraphs above as if set forth in full.

20 86. Defendant has received a benefit at BMG's expense by using the Spruce Mark
21 and Spruce Trade Dress without authorization from or compensation to BMG.

22 87. Defendant's unauthorized use of the Spruce Mark and Spruce Trade Dress was
23 willful, intentional, malicious, deliberate, and in bad faith.

24 88. It would be unjust for Defendant to retain this benefit without paying the value
25 thereof to BMG, which value is in an amount to be proven at trial.

26 **NINTH CAUSE OF ACTION**

27 (Declaratory Relief)

28 89. Plaintiff incorporates by reference all paragraphs above as if set forth in full.

1 90. A present and actual controversy has arisen regarding the right of Defendant to
2 use the Spruce Mark and Spruce Trade Dress in connection with the business of the Park City
3 Spruce Restaurant and the parties' respective rights under the oral contract alleged herein.

4 91. BMG requests a declaration of its rights and obligations vis-à-vis Defendant with
5 respect to the current and future use of the Spruce Mark and Spruce Trade Dress.

6 **PRAYER FOR RELIEF**

7 Plaintiff Bacchus Management Group, LLC prays this Court award:

- 8 1. A judgment in favor of Plaintiff and against Defendant on all claims;
- 9 2. A declaration that Defendant has breached and continues to breach the oral
10 agreement;
- 11 3. A declaration that Defendant has infringed and continues to infringe BMG's
12 trademark;
- 13 4. A declaration that Defendant's continued use of the Spruce Mark and Spruce
14 Trade Dress is illegal;
- 15 5. An order preliminarily and permanently enjoining Defendant from using or
16 advertising the Spruce Mark or Spruce Trade Dress in connection with any restaurant
17 establishment owned or operated by Defendant;
- 18 6. An accounting of all damages suffered by BMG as a result of Defendant's
19 actions;
- 20 7. An accounting of Defendant's profits as a result of their use of the Spruce Mark
21 or Spruce Trade Dress;
- 22 8. Compensatory damages in an amount to be determined at trial;
- 23 9. Restitution and disgorgement of Defendant's unjust profits to the extent allowed
24 by law;
- 25 10. Treble damages for willful infringement;
- 26 11. Statutory damages under the Lanham Act;
- 27 12. Exemplary and punitive damages in an amount to be determined at trial;
- 28 13. Prejudgment interest;

1 14. Costs, expenses and reasonable attorney's fees pursuant to, among others,
2 15 U.S.C. § 1117 and/or common law;

3 15. Such other and further relief as the Court may deem just and proper.

4 **DEMAND FOR JURY TRIAL**

5 Plaintiff Bacchus Management Group, LLC demands a trial by jury of any issues triable
6 of right by jury.

7
8 DATED: March 3, 2011

SEDGWICK, DETERT, MORAN & ARNOLD LLP

9
10 By: Matthew A. Fischer
11 Matthew A. Fischer
12 Jia-Ming Shang
13 Attorneys for Plaintiff
14 Bacchus Management Group, LLC
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AO 120 (Rev. 3/04)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Colorado on the following ☐ Patents or ☒ Trademarks:

DOCKET NO. 10-cv-02463	DATE FILED 10/8/10	U.S. DISTRICT COURT FOR THE DISTRICT OF COLORADO
PLAINTIFF Zuke's LLC THIRD-PARTY CROSS-CLAIMANT Blue Buffalo, LTD. THIRD-PARTY CROSS-CLAIMANT Arthur Dogswell, L.L.C.		DEFENDANT Blue Buffalo Company, LTD. THIRD-PARTY CROSS-DEFENDANT Arthur Dogswell, L.L.C. THIRD-PARTY CROSS-DEFENDANT Blue Buffalo, LTD.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
3		
4		
5		

In the above-entitled case, the following patent(s)/trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input checked="" type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
3,028,301 1		Arthur Dogswell, L.L.C.
3,457,352 2		Arthur Dogswell, L.L.C.
3		
4		
5		

In the above-entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK	(BY) DEPUTY CLERK	DATE

Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy